

**United States Environmental Protection Agency  
Criminal Investigation Division  
Investigative Activity Report**

**Case Number**

0506-0026

**Case Title:**

Ferguson Enterprises Inc.

**Reporting Office:**

Detroit, MI, Resident Office

**Subject of Report:**

Interview of (b)(6), (b)(7)(C)  
Engineer

**Activity Date:**

September 11, 2009

**Copies to:**

**Related Files:**

**Reporting Official and Date:**

(b)(6), (b)(7)(C), RAC

14-SEP-2009, Signed by: (b)(6), (b)(7), RAC

**Approving Official and Date:**

(b)(6), (b)(7)(C), SAC

09-OCT-2009, Approved by: (b)(6), (b)(7), SAC

**SYNOPSIS**

09/11/2009 - U.S. EPA CID Special Agent (SA) (b)(6), (b)(7)(C) and FBI SA (b)(6), (b)(7)(C) interviewed (b)(6), (b)(7)(C) Associate Electrical Engineer, Detroit Water and Sewerage Department (DWSD) regarding (b)(6), (b)(7)(C) participation in the review of bids submitted for contract DWS 844A: Security System Upgrades for Booster and Pump Stations.

**DETAILS**

On September 10, 2009, U.S. EPA CID Special Agent (SA) (b)(6), (b)(7)(C) and FBI SA (b)(6), (b)(7)(C) interviewed (b)(6), (b)(7)(C) Associate Electrical Engineer, Detroit Water and Sewerage Department (DWSD) regarding (b)(6), (b)(7)(C) participation in the review of bids submitted for contract DWS 844A: Security System Upgrades for Booster and Pump Stations. After being informed of the identity of the interviewing agents and the purpose of the interview, (b)(6), (b)(7)(C) provided the following information:

(b)(6), (b)(7)(C) (b)(6), (b)(7)(C) East Pointe, Michigan; (b)(6), (b)(7)(C);  
DOB: (b)(6), (b)(7)(C); work address: 1420 Washington Blvd, Suite 400, Detroit;  
work telephone: (b)(6), (b)(7)(C).

(b)(6), (b)(7)(C) has been employed for the last eight and half years with the DWSD, and prior to that (b)(6), (b)(7)(C) worked for Great Lakes Steel for eleven years. (b)(6), (b)(7)(C) also worked for DWSD for another eight and half years before being employed by Great Lakes Steel. (b)(6), (b)(7)(C) was a part of the evaluation committee for DWSD contract 844A. (b)(6), (b)(7)(C) explained that it is standard practice to have the evaluation committee consist of representatives of groups within the DWSD who have a stake in the contract being evaluated.

The evaluation committee for 844A consisted of (b)(6), (b)(7)(C) (engineering), (b)(6), (b)(7)(C) (maintenance), (b)(6), (b)(7)(C) (field operations), (b)(6), (b)(7)(C) (maintenance).

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(security), (b)(6), (b)(7)(C) (IT) as well as representatives from PMA and the Smith Group. (b)(6), (b)(7)(C) explained that PMA serves as a facilitator for the evaluation committee during their review of the bids. In the case of 844A Asad Issac represented PMA. The Smith Group provides oversight and technical review of the contract including during the construction process. (b)(6), (b)(7) and (b)(6), (b)(7) were the Smith Group employees assigned to 844A. (b)(6), no longer works for the Smith Group.

(b)(6), (b)(7)(C) recalled that Motor City Electric (MCE) was the highest ranked bidder for 844A by the evaluation committee. The final score is based on a total of ten categories, including the company's organizational structure, design manager and construction manager. The evaluation committee evaluates the individuals named for each position based on their individual experience. The committee also reviewed the technical portion of the bid which consists of twenty to twenty five categories. Each committee member scores the bid packages independently from one another but then get together to discuss their findings and justify the scoring given. The PMA representative keeps track of the scores on a chart on the wall during the meeting and is the one who records the tabulation. The evaluation committee reviews the bids by "team by team, proposal by proposal." These findings are distilled into one report by the PMA representative. The Contracts and Grants department receives as copy of the PMA report as does DWSD.

The maximum score for the bid is one thousand points. (b)(6), (b)(7)(C) commented that MCE was close to the maximum score and was the highest scoring bidder. A total of four companies submitted bids which were evaluated. (b)(6), (b)(7)(C) thought that the order of scoring was as follows: 1) MCE 2) DFT 3) EBI 4) Walbridge. The committee sends a recommendation letter to the upper management of DWSD, which at the time of the awarding of 844A was (b)(6), (b)(7)(C). The Director then submits (b) selection to the Water Board for approval.

Once a company is submitted to the Water Board for approval the DWSD negotiates with the selected company. However in the case of 844A, the decision was made to negotiate with both MCE and DFT. When asked who was it that made the decision to negotiate with the top two bidders verses the usual top bidder, (b)(6), (b)(7)(C) replied probably the director.

(b)(6), (b)(7)(C) explained that no one else in DWSD had the authority to make such a decision. The explanation provided to (b)(6), (b)(7)(C) was that given the cost difference between the two bidders the director wanted to make sure that the selected contractor did not incur cost overruns or change

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orders. (b)(6), (b)(7)(C) does not recall how (b) learned of this explanation. (b)(6), (b)(7)(C) agreed that any change orders have to be approved by the DWSD. The evaluation committee does not look at the cost of the bids submitted as that is reviewed and evaluated separately. The decision to negotiate with two bidder is somewhat unprecedented in (b)(6), (b)(7)(C) experience.

(b)(6), (b)(7)(C) explained that (b) wanted MCE to be awarded the contract has they were the lowest bidder, were a quality firm with a good experience base. (b)(6), (b)(7)(C) added that in (b) opinion MCE was a "top notch" firm.

After the decision was made to negotiate with the two companies, the bidders were asked to submit answers to several questions, mostly clarifications of information provided in the original bid packages. The evaluation committee was reconvened to review the additional submittals in conjunction with the bid packages. (b)(6), (b)(7)(C) of Contracts and Grants stopped into a meeting of the evaluation committee and directed the committee member not to make a recommendation but just to evaluate the packages. (b)(6), (b)(7)(C) does not recall the justification given by (b)(6), (b) for why the committee was to not come up with a recommendation on a contractor.

PMA handled most of the correspondence between the bidders and the DWSD. (b)(6), (b)(7)(C) reviewed some of the draft correspondence via email and provided comments to PMA accordingly. PMA also created a matrix form which lists the committee's findings. The committee's recommendation for the first round of bid review was transmitted to the DWSD Executive Team via a cover letter written by PMA. PMA also processes claims for damages and change orders.

(b)(6), (b)(7)(C) was asked (b) opinion and recollection on the issue of the bidding contractors having to commit to a completion schedule which was, in part, dependant on a third party. (b)(6), (b)(7)(C) explained that the security system required SBC to install new fiber optic lines. MCE requested an additional 183 days to ensure that the lines were installed and the system could be tested while DFT told the DWSD that they would comply with the existing schedule. It is (b)(6), (b)(7)(C) recollection that all parties noted the reliance on SBC as a concern. As for MCE's position that the DWSD had added increased the scope of work items to the fifty sites which would require additional time, (b)(6), (b)(7)(C) thought that MCE could have completed the work on time.

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(b)(6), (b) (7)(C) characterized DWSD's awarding of the contract to DFT as "a bad business decision" given MCE's reputation and prior experience with DWSD as well the \$2.5 million cost differential between MCE and DFT.

(b)(6), (b) (7)(C) pointed out that the MCE proposal provided for the installation of all "critical" components within one year and the company likely would have been able to get the entire system operational without incurring any additional costs.

DFT ended up taking an additional six months to a year over their contract schedule. The contract set forth penalties in the case of DFT's failure to comply with the schedule however the DWSD never enforced this contractual provision. (b)(6), (b) (7)(C) group was responsible for enforcing the contract. (b)(6), (b) (7)(C) is aware that DFT submitted change orders but they were all denied. (b)(6), (b) (7)(C) added that some of the change orders were requests for payment on the same issue, as DFT seemed to be trying to come at the issues in different ways. (b)(6), (b) (7)(C) and (b)(6), (b) (7)(C) would have been the decision makers on the change orders.

Some of the considerations given to negotiating with two bidders verses the standard one are as follows:

- 1) Given MCE's request for an additional 183 days to complete the project there was a concern that DWSD would incur additional internal and external costs.
- 2) The security representative may have wanted the system in sooner given the Homeland Security related issues. (b)(6), (b) or others may have used this criteria in an attempt to override the cost difference between the two bidders. (b)(6), (b) (7)(C) doesn't think this is a valid concern but opined that the DWSD management may not agree.
- 3) The extension of time would have also resulted in additional security costs to the DWSD.

(b)(6), (b) (7)(C) reviewed a memo dated April 14, 2004 from the evaluation committee to (b)(6), and (b)(6), (b), which was routed through (b)(6), (b). This memo presents the recommendation of the evaluation committee to award 844A to MCE. SA (b)(6), (b) pointed out the handwritten note on the second page of the memo which states that the recommendation "wasn't what the Board intend (sic). This gos (sic) against the spirit of the process that was approved by the Board." (b)(6), (b) (7)(C) stated that (b)(6), (b) (7) comments did not make any sense as a recommendation is exactly what the process results in which is the best deal for the monies spent. (b)(6), (b) (7)(C) added that by negotiating with two bidders the DWSD may have violated city policy. The policy is geared towards preventing corruption and should

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apply to all levels of city government, not just the evaluation committee members. (b)(6), (b) (7)(C) has not heard of or personally been involved with any other contracts which were negotiated between two bidders.

(b)(6), (b) (7)(C) suggested the agents speak to (b)(6), (b) (7)(C) of the DWSD on this issue as (b) has more experience in evaluating bids. (See Attached April 14, 2004 memo)

IMG is a consulting group contracted by DWSD to review the language of request for proposals (RFPs) and contracts for technical and legal deficiencies. In (b)(6), (b) (7)(C) experience the IMG staff did not provide any added value to the process and make obvious comments, if any at all. (b)(6), (b) (7)(C) opined that Judge Feikens had good intentions in requiring outside oversight of the RFP and contracts but the effort fell short. IMG does not get involved in the negotiation phase of the contracts.

(b)(6), (b) (7)(C) believes the DFT 844A contract was poorly executed, required additional time to complete and created a lot of additional work for the DWSD employees. (b)(6), (b) (7)(C) thinks these problems were due in part to incompetence on the part of DFT. One example was how motion sensors were installed on fencing which was not tightened, so every time the wind blew hard enough the alarms were triggered. (b)(6), (b) (7)(C) does not know of any efforts by DWSD staff to challenge the company as to the numerous problems.

(b)(6), (b) (7)(C) recalled being deposed as a part of a lawsuit filed by MCE over the awarding of 844A to DFT. (b)(6), (b) (7)(C) was deposed in front of the other witnesses involved in the case. The only advice (b)(6), (b) (7)(C) received regarding (b) testimony was from the city attorneys and that was to answer the question asked, no more, no less.

(b)(6), (b) (7)(C) has also been a part of the evaluation committee for the following contracts:

- 1) DWS 831 which was awarded to Double Jack Electric
- 2) PC 713 which was awarded to Walbridge Aldridge/Tucker Young JV
- 3) PC 759 which was awarded to DeMaria

At the conclusion of the interview (b)(6), (b) (7)(C) was served with a grand jury subpoena for (b) testimony.

**ATTACHMENT**

Evaluation Committee Memo

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